

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CA3848
	)	EEOC NO.: 21BA92229
<b>JOHN E. SCHMIDT</b>	)	ALS NO.: 10-0233
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon John E. Schmidt's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>[1]</sup> of Charge No. 2009CA3848; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On May 20, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Dixon-Myers Transportation ("Employer") denied him wages because of his age, 52 (Count A), disability, knee disorder (Count B), and arrest record (Count C), in violation of Sections 2-102(A) and 2-103(A) of the Illinois Human Rights Act ("Act"). On April 1, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On April 3, 2009, the Petitioner timely filed this Request.
2. In February 2008, the Employer hired the Petitioner as a Motor Coach Driver. In February of 2008, the Petitioner informed his supervisor that he had knee problems. The supervisor told the Petitioner that the Employer did not require documentation of his knee problem.
3. Also in February 2008, the Petitioner was given an orientation by the Employer. The Petitioner acknowledged that during the orientation, the Employer told him that drivers were not given per diems, i.e., allowances or reimbursements for daily expenses.

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<sup>[1]</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

4. From July 4, 2008, through July 7, 2008, the Petitioner drove one of the Employer's motor coaches to New York City, New York for a charter trip. The Employer gave the Petitioner an allowance of \$1,200.00 to cover fuel, tolls, and the cost of dumping the restroom.
5. The motor coach broke down in Long Island, New York.
6. The Petitioner rented a hotel room and a car to get around. As a result, the Petitioner incurred expenses of \$2,139.01. The Petitioner demanded that the Employer reimburse him for these expenses. The Employer refused the Petitioner's demand, citing its policy against paying per diems to drivers.
7. On July 22, 2008, the Employer discharged the Petitioner.
8. In his charge, the Petitioner contends that at the time the Employer discharged him, the Employer owed him wages in excess of \$ 5000, which amount includes the expenses the Petitioner incurred during the New York trip, plus interest. The Petitioner alleged the Employer denied him these wages because of his age, his disability, and his arrest record.
9. The Employer stated that it did not owe the Petitioner any wages. Rather, the Employer stated the Petitioner overspent his \$ 1,200 allowance.
10. In his Request the Petitioner argues that the Employer and its attorney made misrepresentations to the Respondent's investigator, and that the Respondent's investigator was biased in favor of the Employer.
11. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues that the Employer articulated a non-discriminatory reason for not paying the Petitioner the amount he demanded, and there is no substantial evidence the Employer's articulated reason was a pretext for employment discrimination based on the Petitioner's age, disability, or arrest record.

## **CONCLUSION**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

In this case, there was undoubtedly a dispute between the Petitioner and the Employer as to what compensation or reimbursement, if any, the Petitioner was entitled to receive as a result of the

July 2008 trip to New York. However, there has been no evidence presented from which the Commission could conclude this wage dispute was motivated by unlawful discrimination in violation of the Act.

In addition, the Petitioner admits that the Employer had a policy against providing its drivers with per diems. The fact that the Petitioner believes he should have been reimbursed by the Employer for the additional expenses he incurred in July 2008 does not transform this wage dispute into a violation of the Act.

Furthermore, as to all Counts A-C, there is no substantial evidence that the Employer applied its “no per diem” policy in a discriminatory manner. There has been no evidence presented that younger, non-disabled employees without arrest records were treated more favorably than the Petitioner under similar circumstances.

Accordingly, it is the Commission’s decision that the Petitioner has not presented any evidence to show that the Respondent’s dismissal of his charge was not in accordance with the Act. The Petitioner’s Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioner’s charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Dixon-Myers Transportation, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 23<sup>rd</sup> day of June 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini